

## DELTA PROTECTION COMMISSION

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## DRAFT

## Minutes of the Delta Protection Commission Meeting

March 27, 1997

6:30 p.m.

Jean Harvie Community Center  
14273 River Road, Walnut Grove, CA

1. Call to Order/Attendance. The meeting was called to order at 6:35 p.m. Commissioners present included: Calone, Curry, Ferreira, Harris, McCarty, Mello, Potter, Rhodes, Salmon, Simas, Thomson, and Yates. Commissioners Cabaldon and Murphy arrived at 6:40 p.m. Commissioners absent were: Broddrick, Canciamilla, McGowan, Nottoli and Sekelsky.

2. Public Comments. There were no public comments.

3. Minutes of the January 23, 1997 Meeting. On a motion by Commissioner Simas, and a second by Commissioner Salmon, the minutes were approved by a voice vote, with Commissioners Murphy and Rhodes abstaining.

4. Chairman's Report. Chairman McCarty welcomed the new and returning Commissioners, Bob Calone was re-elected as a reclamation district representative, Council Member Christopher Cabaldon is the new Sacramento Area Council of Governments representative, replacing Council Member Heather Fargo, Mayor Fred Harris of Rio Vista is the new Association of Bay Area Governments representative, and Council Member Gloryanna Rhodes of City of Lathrop is the new San Joaquin Council of Governments representative. He added thanks to Heather Fargo for her four years of service on the Commission, including serving as Vice Chair for all four of those years. Chairman McCarty noted the next regular meeting of the Commission is scheduled for Thursday May 22, 1997, in the Jean Harvie Community Center. A meeting of the Budget, Finance and Administration Subcommittee is scheduled for Wednesday, April 30, 1997 at 4:00 p.m.

5. Attorney General's Report (Note: This item was addressed after Item 6). Dan Siegel of the Attorney General's Office, reported on the United States Supreme Court decision case re the federal Endangered Species Act. The courts held that the ranchers had no standing to bring the case, but the Supreme Court reversed the Court of Appeals and found that any person could challenge a federal government decision about the Act. Regarding the Wheelabrator lawsuits re sludge in the Primary Zone, the federal suit is still held in abeyance; the Commission lost the State suit and adopted a regulation. The Office of Administrative Law approved the regulation, and Wheelabrator has until April 8 to file a new lawsuit. The AG has been told informally that they do intend to file. Mr. Siegel reported on the Commission's amicus brief in the flooding suit; he said the arguments went well and decision should be released in about two and a half months.

Commissioner Curry asked if the regulation is still called P-3, or is there a new name; Ms Aramburu said it looks just like P-3, its just called a regulation.

6. Executive Director's Report. Margit Aramburu reviewed the materials in the meeting packet including: OAL approval of the Commission's regulation, formerly known as Utilities and Infrastructure P-3, on January 28; the Rulemaking File was received on March 24, and letters to the local governments will be mailed shortly. She noted that materials distributed at the meeting included; new roster of Commission members, a letter to Yolo County, a chart showing peak inflows and outflows at several

dams during January's floods, figures on Williamson Act from current annual report, a copy of AB 979, Abandoned Vessel Legislation, a draft letter to the Governor re: the FEAT 30 day report, a copy of South Delta and Central Delta Water Agencies letter on Governor's FEAT report, and information about CALFED storage and conveyance alternatives .

Ms Aramburu noted she had attended several meetings on behalf of the Commission including: Biosolids Conference on January 29; Bethel Island Tour with Assembly Members Torlakson and Leach on January 31; tour of Decker Island on February 3; Resources Delta Levee Habitat Advisory Committee on February 7 and March 7; tour of site of Delta Environmental Educational Center near Jersey Island on February 10; In-Channel Islands Group on February 13; Senator Dianne Feinstein's Flood follow-up meeting on February 20; met Resources and Fish and Wildlife Service regarding work windows for in-channel work on March 12, Department of Conservation workshop on Beyond the Williamson Act on March 13; a Senate Committee Hearing on SB 172 (Abandoned Vessel Legislation) on March 11; attended a meeting on Big Break on February 12, CALFED workshop on Storage and Conveyance on March 20, Grasslands Bypass First Quarterly monitoring meeting on March 25.

Ms Aramburu noted Yolo County approved its General Plan amendment to conform with the regional plan on March 18; that is the last local government general plan amendment.

Regarding sludge issues, Ms Aramburu noted on April 8, San Joaquin County will consider a proposed ordinance which bans the use of biosolids in the County.

Regarding controlling vessel traffic on Delta waterways, Department of Boating and Waterways has requested a formal Attorney General's opinion about DBAW's authority to close waterways in an emergency. The response will be available in a few months.

Regarding marinas upstream from bridges, State Land Commission has been hosting meetings with local, state and federal agencies, reclamation districts, marina owners and engineers to discuss the issue; to improve communication between the agencies; and to develop guidelines for water flow which must be met to maximize safety. There have been two meetings to date; with a third meeting in early April.

Ms Aramburu noted that an agreement has been signed by DWR and the Corps to carry out Phase II of Sacramento-San Joaquin Delta Investigation which will study all aspects of bringing Delta Levees to PL 192-82 ag standards; 1.5 feet above the 300 year flood plane. The cost of the study will be \$3.8 million and will be completed in 3 years.

Finally, she added the Commission received a note of thanks from former Commissioner Len Herendeen regarding the resolution of appreciation.

Commissioner Salmon asked the source of funding for the levee study. Commissioner Potter said it is a 50-50 split between the Corps and the State.

Commissioner Ferreira asked if the study would address channel islands. Commissioner Potter suggested the Corps brief the Commission on the study.

Commissioner Curry commented if there are areas of the Delta where selenium is a problem; Commissioner Potter said not in the Delta, but in the Bay. Ms Aramburu said selenium is a naturally occurring material. She offered to research the issue and respond to the Commission. She agreed that

selenium is a by product of the refineries in Contra Costa County. Commissioner Yates suggested staff contact Steve Wong in his Department for more information.

7. Pending Projects Memo. There were no questions or comments.

8. Report from the Levees Subcommittee: Chairman McCarty noted that the Subcommittee had met February 27, 1997 and received an update on regulatory issues; directed staff to write a letter of support for the proposed General Orders on Dredging to the Central Valley Regional Water Quality Control Board; discussed the dredging windows now in the Corps nationwide and general permits Jerry Robinson of the South Delta Water Agency presented a draft letter outlining issues regarding the recent flood events; reviewed a letter from Lester Snow which outlines the use of prioritized funds, the Committee reiterated the Commission's position that levees not be prioritized, but treated as a regional unit; the Subcommittee received copies of the 30 Day FEAT report and asked staff to prepare a comment letter and agendaize the topic for the full Commission to review; and DWR staff briefed the Subcommittee on the status of FEMA-OES agreements, noting that pre-1995 claims have been paid, FEMA is recognizing the HMP agreement and DWR staff is assisting in determining which islands meet the HMP standards.

9. Report from the Budget, Finance and Administration Subcommittee: Chairman McCarty reported that the Subcommittee met March 5, 1997 and received a report on expenditures, there is an expected surplus of \$70,000; update on consultant contracts; agreed that 10% penalty fines should be used to pay off the Commission's loan from ELPF; and agreed without a recommendation that the Commission consider a contract with Sonoma State for study of in-channel islands; and recommended that next fiscal year additional work be carried out on mapping agricultural land uses and land use changes. A follow-up meeting will be held April 30, 1997.

Commissioner Mello asked the balance of the ELPF loan; Chairman McCarty estimated that \$70,000 had been repaid, noting that last year's surplus had not been eligible for repayment, and the \$14,000 from the fines.

10. Consideration and Possible Adoption of Position of Support for SB 172: Abatement of Abandoned Vessels. Ms Aramburu summarized the Commission's action on the issue of abandoned vessels; the Commission directed staff to work with members of the Legislature to develop legislation which would address abandoned vessel removal and disposal. She has been working with Senator Rainey, of Contra Costa County, on this matter. Co-sponsors of SB 172 include Senator Johnston, and Assembly members Torlakson and Leach. She outlined minor changes that have been made recently.

She noted there is a second piece of legislation, sponsored by Assembly Member Lynn Leach, to allow discussion of which approach is most appropriate. She suggested that the Commission take a position on SB 172; if there are substantial changes, the revised legislation would return to the Commission for further review.

Chairman McCarty noted that abandoned vessels are a problem in the Delta; those vessels are difficult to dispose of because of the construction materials and they are building up in the Delta.

Ms Aramburu noted there are two key issues: the lack of adequate funding for a removal process, and second the process is tedious and time consuming, developed to protect boat owners. She said the problem identified in the Delta is abandoned "junkers". She said it is a regional issue in the Delta, with two counties sharing one waterway in many locations.

Commissioner Curry asked about the funding; she said if there are funds generated from the sale of a recovered vessels, those funds go to the program and said she could coordinate with Rainey's office re long-term funding. She noted that there will be no General Funds in the program. He asked why the funds would be transferred to the Department of Boating and Waterways; Ms Aramburu said a new fund would be set up under the direction of Department of Boating and Waterways. Specifically ear marked for removal of vessels.

Chairman McCarty asked for public comments; there were none.

Commissioner Thomson moved the Commission take a position of support for SB 172 with a "watch" position for AB 979; seconded by Commissioner Simas; the motion was adopted by voice vote, Commissioner Cabaldon abstained by virtue of his position with the Legislature, and also abstaining were Commissioners Murphy and Yates.

11. Consideration and Possible Adoption of Position Requesting 10% Penalty Fees be Applied to Repayment of \$250,000 Loan from the Environmental License Plate Fund.

Ms Aramburu explained the original legislation included two elements to help fund the Commission: a loan of \$250,000 from the ELPF, and a 10% surcharge on all fines collected in the Delta. The fine program has now been deleted from the Act. Approximately \$14,000 has been collected. This item would ask the Legislature to direct the penalties monies collected toward repayment of the Commission's loan through an amendment of Senator Johnston's spot bill. She noted that surplus funds from last fiscal year, from the Boating and Waterways Fund, could not be credited toward repayment of the ELPF loan.

Commissioner McCarty asked for public comment; there was none.

On a motion by Commissioner Calone, and a second by Commissioner Salmon, the motion was adopted unanimously by voice vote.

12. Consideration and Possible Approval of Contract with Sonoma State University, Professor Chris Kjeldsen to Survey Delta In-Channel Island Restoration Sites and Prepare CALFED Category III Grant Application for Restoration Project.

Ms Aramburu reported the Commission staff has been working with a regional group whose goal is to protect and enhance, and possibly restore the channel islands. She noted the waterways are habitat for Delta smelt, an endangered species and resource management agencies are reluctant to have materials placed in the shallow water habitats. The group is proposing to actually do some projects to develop consensus of what are suitable, cost effective techniques to protect the channel islands, and develop guidelines for others to use for their own projects. The overall project has three parts: the pre-evaluation of sites which are being evaluated and selected by a group of experts, the second component is a grant application for Category III funds; the third component is development of guidelines, and a grant application has been submitted by the Estuary Project. The unfunded portion is the pre-evaluation, which can be underway while the Category III applications are being considered. The Commission has unallocated funds in its current budget which must be returned if they are not expended. The cost would be about \$27,000 and would be carried out by Sonoma State University this fiscal year. Professor Chris Kjeldsen would be the lead researcher. She noted the Budget and Finance Subcommittee agreed the full Commission should consider the proposal.

Commissioner Mello asked what will happen to the funds if not expended on this project; could the monies be used to pay off the loan from the ELPF; Ms Aramburu said the leftover funds this fiscal year could not be used to pay off the loan. Commissioner Mello asked if Sally Shanks has participated in the in-channel islands group; Ms Aramburu said yes, she offered islands to be used for the project. Ms Aramburu noted that a letter of support had been received from the Estuary Project.

Commissioner Ferreira asked who determines what comes out of the various funds; Ms Aramburu said the Department of Conservation provides administrative services to the Commission at no cost, they set up the program, trying to match costs with the funds. They arbitrarily selected the funds and she said staff would work with the Budget and Finance Subcommittee and Department of Conservation to redo the funds. Commissioner Ferreira said the Commission should not fund more studies just because they have the money, and the funds should be returned if not expended. He said in light of the new Corps study, they may be studying these islands. He asked who owns the islands, does the group have permission to access the islands to study them.

Commissioner Potter asked if the Budget and Finance Subcommittee had recommended approval of the contract and said he was relying on the position of the Subcommittee.

Chairman McCarty commented that he concurred there is no need to study topics when others will be studying those issues. This topic is one that keeps falling through the cracks, no one is taking leadership on it. He agreed the levees themselves are a larger issue. The Subcommittee felt it was the Commission's responsibility to take a leadership position and the Commission has the funds available to help the project move forward, and there is a strong likelihood that this project will receive Category III money if these funds can be spent to develop information to support the application. The contract also pays for Professor Kjeldsen to help prepare the Category III grant application.

Commissioner Ferreira asked how much money is involved from Category III. Chairman McCarty asked Commissioner Potter to respond. Commissioner Potter said there are 60 million dollars in Prop 204 and the "stakeholders" have put up 20 million dollars, federal government has included 143 million which includes some unknown amount of money for Category III, probably 20 million dollars. There is some belief that the water users should come up with 40 million more. That totals about 180 million dollars.

Commissioner Ferreira said the money should be invested in the levees, rather than the in-channel islands, even if the money is only \$100,000. He said somebody has to say we are tired of studies; with all the studies we've already paid for, we could have fixed the levees. Chairman McCarty agreed, but added that the easiest way to fix the problem is to go to setback levees, to take farmland out of production for those setback levees, to let nature take its course. He said the information on channel islands is that they are supporting more habitat than any levees. The channel islands also provide protection for the levees. In the absence of any other party moving forward with protection of the channel islands, the Commission ought to go forward.

Commissioner Mello asked if the Category III money is for habitat restoration; Commissioner Potter said yes, for work that will enhance the natural habitats for fish and wildlife, actions other than water flows, for example, spawning gravel, fish hatcheries, wildlife habitat, etc.

Commissioner Potter added the State had put about 70 million dollars into construction and maintenance of Delta levees since 1987, the local RDs have spent at least that much.

Commissioner Harris asked if the islands to be studied are around Webb Tract; Ms Aramburu said Webb Tract islands are being considered, and may be selected partly because they are already owned by Department of Fish and Game and there would not be issues of ownership or right of access. He asked the size of the islands; Ms Aramburu said there is a great variety in size, they are usually long and narrow and thin, and in a variety of sizes. She noted they are the only areas of unvegetated habitat in the Delta.

Chairman McCarty commented that on Beaver Slough there is a proposal to create new emergent habitat in a shallow water area; it became very controversial about which habitat should be protected and which should be enhanced. He said the same issues arise with the channel islands. He noted the channel islands are eroding at a rapid rate and we can't wait around for solutions.

Commissioner Ferreira asked if the Commission owned an island; Ms Aramburu said the Commission has a conservation easement on one area. He suggested the information gathered from that site should be adequate to determine what effects there have been from such work. He said the \$27,000 is just seed money to go out and get more money to do more studies. There already has been work on channel islands which can be studied to determine which approaches work better. Chairman McCarty commented that M&T Staten had come to the Commission and described the increasing costs for the projects there. He suggested that the Commission needs to help get the projects back to a reasonable cost so these projects can be implemented.

Ms Aramburu said she agrees there should be a more common sense approach to use what has already been successful. She noted that the Canal Ranch is an example of how the agencies changed their minds and cannot agree on the benefits of the various techniques. She said the challenge is to bring all the key agencies together to build consensus to help landowners have predictability when they want to propose a project. Commissioner Ferreira commented that is a problem between Department of Fish and Game and the U.S. Fish and Wildlife Service, it has nothing to do with a study. Ms Aramburu noted there are scientists within each agency that disagree and said the group wants to build support through a demonstration project. She agreed that it may be a political problem, but it is also a scientific problem.

Commissioner Salmon said it irritates him too, but he agrees with Commissioner Mello. In the South Delta, the RDs are being required to plant inside the waterways. He is hoping that there can be information developed that will show the worth of the channel islands for wildlife habitat to use them for mitigation and get on with the necessary work of clearing some of the channels. He is going along with the contract for that particular reason, to get the regulators off the backs of the RDs.

Commissioner Curry asked how many sites there will be; Ms Aramburu said the number of sites is not yet known. He asked if the money is to be used to pursue additional grants; Ms Aramburu said that task was added at the request of the Budget and Finance Subcommittee to ensure that the Category III funds are pursued. She said most of the funds will be used for the pre-project survey. Commissioner Curry asked if the funds will be used to pursue additional funds not just to do another study; Ms Aramburu agreed and said there will be a physical project on the channel islands.

Commissioner Potter commented that the Commission included in its Plan the need to develop a strategy to protect the channel islands and said he believes this will move toward such a strategy.

Chairman McCarty asked for public comment.

Jerry Robinson said there is habitat to be saved with this program and its important to protect the channel islands. He said in White Slough there used to be two islands and they have disappeared in the last 35 years. He suggested spending some money to protect the islands, but not spending a lot of money on the ones that are going to disappear any way. He supports the contract. He suggested having Professor Kjeldsen come to the Commission to answer questions.

On a motion by Commissioner Potter and second by Commissioner Murphy, the contract was approved by voice vote; Commissioner Ferreira voted nay.

13. Consideration and Possible Adoption of Letter to Secretary Wheeler Regarding Flood Emergency Action Team (FEAT) 30 Day Report.

Ms Aramburu stated the Governor's FEAT is looking at flooding issues Statewide. The Commission is aware of and has been actively working on flooding issues in the Delta the last four years. She noted the Commissioners received a memo and excerpts from the February 10, 1997 report in the mailing packet. I have drafted a letter for review, to forward to Secretary Wheeler regarding Delta flooding issues. She reviewed the issues addressed in the draft letter.

Commissioner Murphy asked how the letter would be finalized; Chairman McCarty said he had reviewed an earlier draft and made some suggestions, and he would review the final draft. He added he is concerned about reestablishment of routine dredging of levee channels.

Commissioner Salmon suggested that the South Delta and the San Joaquin River be added as locations to be evaluated for additional stream gauging stations and telemetry. The area needs additional information to update the flood information.

Chairman McCarty asked for public comments; there were none.

Commissioner Potter noted that the FEAT has been appointing local advisory committees as part of its process, and said there may still be a Delta public hearing and a Delta Committee. A meeting has been tentatively scheduled for April 16 or 18 in the Jean Harvie Community Center in Walnut Grove. Ms Aramburu asked if it is a public meeting; Commissioner Potter said yes. Ms Aramburu volunteered to notify the Commissioners of the date and time of the public meeting.

Commissioner Harris asked if every bridge on the Sacramento and the San Joaquin Rivers have flow sensors or water elevation sensors; Commissioner Potter said he did not think so, but was not sure. Commissioner Harris said a Rio Vista resident hooked up with flow information on the Internet which was more current than the taped information available by phone. He said the current flow information was very helpful in forecasting flood fight. He agreed that the sensors are very important.

Commissioner Potter commented that the Internet information is called CDEC, and that system became overloaded in January and the forecasters could not access the information so the system will be adjusted. He agreed that the CDEC system will have two access routes, one for the general public and one for local agencies.

On a motion by Commissioner Salmon and a second by Commissioner Calone, the Commission voted unanimously by voice vote to have the Chairman review and sign a letter to Secretary Wheeler on the 30 Day FEAT report.

14. Oral Update on CALFED Activities and Studies.

Ms Aramburu said the Commission had received a set of maps at tonight's meeting that are from the CALFED public workshop on Storage and Conveyance. These are the 16 alternatives that CALFED is modeling and that will be analyzed as part of the environmental document. The 16 alternatives all fall within the three basic alternatives: 1) no change to the conveyance system, only changes in the management of the system; 2) through Delta conveyance and 3) an isolated transfer facility. Ms Aramburu briefly reviewed the 16 alternatives, using the maps to focus the discussion. Comments on the 16 alternatives are due on April 6, Ms Aramburu will draft a comment letter for submittal based on the Commission's adopted policies in the regional plan, after review and approval of the Chairman. If there are any alternatives the Commission would like studied, let staff know.

The next big release of information will be the release of the Ecosystem Restoration Program Plan (ERPP) at a public workshop on April 8.

Chairman McCarty noted that there are a range of options under consideration, and noted that the feasibility and reasonability of some of the options is questionable. He said staff wants to keep the Commission informed.

Commissioner Mello said he had attended the Storage and Conveyance workshop and had made comments about retirement of ag land at the expense of moving water to the south.

Commissioner Harris noted that some alternatives would have an adverse effect on certain islands, such as Staten Island.

Commissioner Mello noted that the North Delta Plan had been studied several years ago, and changes had been made to address concerns of the landowners.

Commissioner Calone noted that the pipeline alternative would make the Plumbers Union happy.

15. Election of Officers.

Ms Aramburu said the Commission has decided to elect officers every two years. There is no prohibition on officers being re-elected. She said nominations should be opened, then closed, the election can be by voice vote. She noted there are two offices: Chair and Vice Chair.

Commissioner Salmon nominated Chairman McCarty as Chair and Commissioner Mello as Vice Chair. The nominations were seconded by Commissioner Simas. There were no other nominations. The officers were elected unanimously by voice vote.

16. Reorganization of Subcommittees

Ms Aramburu described the two active Subcommittees: Budget and Finance and Levees. The Recreation Study Oversight Subcommittee will be meeting soon, but would be disbanded after the project is complete. The San Luis Drain Subcommittee would only meet when there is some action. There are no members on the Legislative Subcommittee.

Chairman McCarty asked members to contact staff if they are no longer interested in participating on any Subcommittee. Any new Commissioners should feel free to join any Subcommittee.

Ms Aramburu added that the Subcommittee meetings are held in the even months, are fully noticed and added any Commissioner can attend any Subcommittee meeting.

17. Creation of Subcommittee to Address CALFED Issues.

Ms Aramburu noted there is a lot of information being released from the CALFED program. The entire Draft environmental document is scheduled to be released in the Fall. The idea of setting up a Subcommittee would be to allow those Commissioners interested in the CALFED program, and its possible impacts to land uses in the Delta, would be able to review and discuss the program proposals in more detail. The Subcommittee would make recommendations to the full Commission for action. At the last meeting, Commissioners Curry and Mello indicated an interest in serving on a CALFED Subcommittee.

Chairman McCarty reinforced the need for the Commission to review the CALFED proposals to ensure they are not in conflict with the Commission's Plan. He asked interested Commissioners to contact staff.

Commissioner Mello suggested that a Subcommittee be established, and so moved. The motion was seconded by Commissioner Murphy and the motion was approved by a voice vote.

Commissioner Potter noted the State Water Resources Control Board has scheduled several days of hearings on the Delta Wetlands Project which includes many land use issues in the overall CALFED program. The CALFED subcommittee may want to look at that project as well. He recalled that the Commission's legislation addresses the project. Ms Aramburu said there is language in the Act which says reservoirs are appropriate land use as long as they do not adversely affect surrounding land uses.

18. Adjourn.

The meeting was adjourned at 8:30p.m.